

"D. That the Administrative Law Judge exceeded his jurisdiction by determining, on remand, that the claimant suffered from a psychiatric condition."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board as follows:

K.S.A. 44-534a, as amended by S.B. 649 (1996), allows that preliminary hearing findings with regard to the following disputed issues shall be considered jurisdictional and subject to review by the Appeals Board:

1. Whether the employee suffered an accidental injury.
2. Whether the injury arose out of and in the course of the employee's employment.
3. Whether notice was given or claim timely made.
4. Whether certain defenses apply.

K.S.A. 44-551, as amended by S.B. 649 (1996), provides that the Appeals Board shall not review a pending preliminary hearing order entered by the administrative law judge unless it is alleged that the administrative law judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 44-534a(a)(2), as amended by S.B. 649 (1996), grants the administrative law judge the authority to grant or deny temporary total disability compensation and ongoing medical treatment from a preliminary hearing order pending a full hearing on the claim.

In the instant case, the Administrative Law Judge granted claimant's request for ongoing temporary total disability compensation. Such Order is within the Administrative Law Judge's authority and an appeal from same does not fall within one of the disputed issues set forth in K.S.A. 44-534a, as amended by S.B. 649 (1996), as above listed. The Appeals Board finds that the Administrative Law Judge did not exceed his jurisdiction in granting claimant temporary total disability compensation and, accordingly, this Appeals Board does not have jurisdiction to review this matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler dated April 15, 1996, remains in full force and effect and the appeals of the respondent and the Kansas Workers Compensation Fund are dismissed.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

c: Daniel L. Smith, Overland Park, KS
J. Donald Lysaught, Jr., Kansas City, KS
Bruce Mayfield, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director